IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 127 of 2007
Date of decision : 12.1.2007

Ch. Santokh Singh .....Petitioner.

Versus

Ravinder Singh Powar & Anr. .....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Puneet Jindal,Advocate
for the petitioner.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 16.11.2006 passed by the learned Civil Judge (Jr. Divn.), Jalandhar vide which the application moved by the plaintiff respondent under Order 6 Rule 17 read with Section 151 C.P.C. has been allowed.

The learned counsel for the petitioner contends that prior to filing of amendment application, the petitioner herein had moved an application for rejection of a portion of an affidavit tendered in evidence by the plaintiff respondent being beyond pleadings and said application was dismissed and, therefore, the amendment sought was unnecessary because the facts sought to be pleaded by way of amendment formed part of the affidavit filed by plaintiff, against which application filed by petitioner stand dismissed.

The second contention raised by the learned counsel for the petitioner is that in view of affidavit filed by the plaintiff respondent it was proved on record that he had knowledge of the fact sought to be pleaded and, therefore, no amendment could be allowed after commencement of trial in view of the amendment in Order 6 Rule 17 CPC, as by way of

amendment a proviso has been added which debars the court to entertain an application for amendment of pleadings after the commencement of trial. In support of this contention the learned counsel for the petitioner placed reliance on a judgment of this Court in ***Sukhdev Singh Vs. Bal Krishan 2005(1) R.C.R.(Civil) 459.***

I find no force in the contentions raised by the learned counsel for the petitioner. Firstly, the contention that the amendment sought is unnecessary would only show that no prejudice has been caused to the petitioner by way of allowing the amendment. The second contention raised by the learned counsel for the petitioner was considered by the learned trial Court and it was held that merely one witness was examined and, therefore, in view of the law laid down by the Hon'ble Supreme Court it could not be said to be the commencement of the trial. Even otherwise the plaintiff respondent had pleaded that he had no knowledge of the fact sought to be pleaded at the time of filing of written statement and he acquired that knowledge subsequently which can be attributed to the date of filing of affidavit. Accordingly no benefit can be drawn by the respondent by way of amendment as no prejudice has been caused to the petitioner. In any case no rights of the parties have been decided so as to entitle this Court to interfere in the matter.

The learned counsel for the petitioner submits that the present amendment was mala fide. I see nothing mala fide in moving the application on coming to know about it subsequent to the filing of the present application.

Dismissed.

12.1.2007. **(VINOD K. SHARMA)**
'sp' **JUDGE**